

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Richard Keith Poe, #259297,)	C.A. No. 0:05-1411-CMC-BM
)	
Petitioner,)	
)	
v.)	OPINION and ORDER
)	
Jon Ozmint, Director, SC Department of)	
Corrections; and Henry D. McMaster,)	
Attorney General of the State)	
of South Carolina,)	
)	
Respondents.)	
_____)	

Petitioner is a *pro se* inmate seeking review of his state sentence pursuant to 28 U.S.C. § 2254. Petitioner has a post-conviction relief (PCR) petition pending in the state court at this time, but filed a habeas corpus petition in this court. Respondents filed a return and motion to dismiss on June 24, 2005, to which Petitioner responded on July 5 and 21, 2005.

In accordance with the court's order of reference, 28 U.S.C. § 636(b), and Local Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation. On August 11, 2005, the Magistrate Judge issued a Report recommending Respondents' motion to dismiss be granted because Petitioner had not exhausted his state remedies. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Petitioner filed objections to the Report and Recommendation on August 29, 2005.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court.

See Mathews v. Weber, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order. Petitioner clearly has a PCR petition still pending in the South Carolina courts. While there has been some delay in setting the petition for hearing, it would be premature at this point to entertain a § 2254 petition in this court.

IT IS THEREFORE ORDERED that Respondents' motion to dismiss is granted and this petition is dismissed **without prejudice**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
September 12, 2005